



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE:



Office: Buffalo

Date:

MAR - 7 2001

IN RE: Applicant:



APPLICATION:

Application to Preserve Residence for Naturalization Purposes
under § 316(b) of the Immigration and Nationality Act, 8 U.S.C.
1427

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

Seal of the U.S. Department of Justice
Prevent disclosure of information
invasion of personal privacy

DISCUSSION: The application was denied by the Acting District Director, Buffalo, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant seeks to preserve his residence for naturalization purposes under § 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1427(b), as a lawful permanent resident who will be absent from the United States for the purpose of engaging in the development of foreign trade and commerce of the United States on behalf of an American firm or corporation or a subsidiary thereof engaged in the development of such trade and commerce.

The district director determined the applicant was not eligible for preservation of residence for naturalization purposes because he filed the present application after he had been absent from the United States in excess of one continuous year as required in § 316(b) of the Act and denied the application accordingly.

On appeal, the applicant states that he had planned to visit the United States in November 1998 but his father took critically ill and he traveled to South Africa twice in October and November 1998 to attend to him in intensive care and then for his funeral in November and then to attend to his personal affairs in December 1998. The applicant states that he would have made a special trip to the United States if he had known that he had to return with each 12-month period.

Section 316. REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION, AND FAVORABLE DISPOSITION TO THE UNITED STATES

(b) ABSENCES.-Absence from the United States of more than six months but less than one year during the period for which continuous residence is required for admission to citizenship, immediately preceding the date of filing the application for naturalization, or during the period between the date of filing the application and the date of any hearing under § 336(a), shall break the continuity of such residence, unless the applicant shall establish to the satisfaction of the Attorney General that he did not in fact abandon his residence in the United States during such period.

Absence from the United States for a continuous period of one year or more during the period for which continuous residence is required for admission to citizenship (whether preceding or subsequent to the filing of the petition for naturalization) shall break the continuity of such residence except that in the case of a person who has been physically present and residing in the United States after being lawfully admitted for permanent residence for an uninterrupted period of at least one year and who thereafter, is employed by or

under contract with the Government of the United States or an American institution of research recognized as such by the Attorney General, or is employed by an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof more than 50 per centum of whose stock is owned by an American firm or corporation, or is employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence, no period of absence from the United States shall break the continuity of such residence if-

(1) prior to the beginning of such period of employment (whether such period begins before or after his departure from the United States), but prior to the expiration of one year of continuous absence from the United States, the person has established to the satisfaction of the Attorney General that his absence from the United States for such period is to be on behalf of such Government, or for the purpose of carrying on scientific research on behalf of such institution, or to be engaged in the development of such foreign trade and commerce or whose residence abroad is necessary to the protection of the property rights in such countries of such firm or corporation, or to be employed by a public international organization of which the United States is a member by treaty or statute and by which the alien was not employed until after being lawfully admitted for permanent residence; and

(2) such person proves to the satisfaction of the Attorney General that his absence from the United States for such period has been for such purpose.

8 C.F.R. 316.5(d) provides, in part, that:

An application for the residence benefits under § 316(b) of the Act shall be submitted on Form N-470 with the required fee and may be filed either before or after the applicant's employment commences but must be filed before the applicant has been absent from the United States for a continuous period of one year.

The applicant became a lawful permanent resident on March 9, 1994. He departed the United States on January 5, 1998 and indicated that he is returning to the United States in August 2000. He filed the present application on March 15, 2000 and after he had been absent from the United States for a continuous period of more than one year.

The regulations are clear and unambiguous. The applicant failed to submit the required application prior to being continuously absent from the United States for more than one year. Consequently, he does not qualify for the benefits of § 316(b) of the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.